

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Harman Analyst: Marion Mann DeJong Bill Number: AB 377

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 04/24/2001

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Water's-Edge/FTB Follow IRS Profit Split Rules for Audit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

☒ DEPARTMENT POSITION CHANGED TO NEUTRAL.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 20, 2001, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would allow a water's-edge taxpayer that has an affiliate company located in Puerto Rico to account for profits by assigning 50% of its profits to each entity.

SUMMARY OF AMENDMENT

The April 24, 2001, amendments clarified that the presumption regarding the profit split method was a "conclusive presumption" and changed the operative date of the bill.

These amendments resolved the implementation and technical concerns raised in the department's analysis of the bill as introduced on February 20, 2001.

Except for the "Effective/Operative Date," "Position," "This Bill," "Implementation Considerations," and "Technical Considerations" discussions, the department's analysis of the bill as introduced still applies. Please note that the revenue estimate provided in the prior analysis still applies because that estimate assumed that the presumption was conclusive and that the bill would apply to all open years.

The "Effective/Operative Date" and "This Bill" discussions have been updated and an additional policy consideration has been added as a result of the amendments. In addition, the "Position" has been changed to reflect action taken by the Franchise Tax Board.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input checked="" type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

05/03/2001

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would become effective immediately upon enactment. However, the bill specifies that it would apply to all “open” taxable years.

POSITION

Neutral.

At its May 2, 2001, meeting, the Franchise Tax Board voted 2-0 to take a neutral position on this bill, with Annette Porini, on behalf of Member B. Timothy Gage abstaining.

THIS BILL

This bill would create a conclusive presumption that if a taxpayer elects to use the profit split method for federal purposes (Internal Revenue Code Section 936), the result is the proper allocation of income to California under the transfer pricing rules (Internal Revenue Code Section 482).

Policy Consideration

By making the provisions of the bill applicable for all “open” years, the bill might be considered a gift of public funds, which requires a public purpose. The bill contains no statement of public purpose.

LEGISLATIVE STAFF CONTACT

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